STATE OF MICHIGAN

COURT OF APPEALS

JEFFERY K. CORWIN,

Plaintiff-Appellant,

v

KATHLEEN ARNETT,

Defendant-Appellee.

UNPUBLISHED
July 30, 2002

No. 231092
St. Clair Circuit Court
LC No. 00-000065-NO

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff walked down a flight of stairs into defendant's garage and sustained severe injuries to his left foot when he stepped on a piece of broken glass laying near the bottom of the stairs. Plaintiff, defendant's fiancé at the time, had spent the night at defendant's home and was preparing to assist her in readying items to be sold at a garage sale and a flea market.

Plaintiff's complaint alleged he was on defendant's premises as a business invitee, and defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that she had no liability because plaintiff was on the premises as a licensee rather than as an invitee, and because the condition was open and obvious. The trial court granted the motion, finding that a genuine issue of fact did not exist either as to whether plaintiff was a licensee rather than an invitee, or as to whether the condition was open and obvious.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992).

A landowner's duty to a visitor depends on the visitor's status. A licensee is a person who enters upon the land of another with the owner's consent. A social guest is a licensee. A landowner owes a licensee a duty to warn of hidden dangers of which the owner knows or has reason to know if the licensee does not know or have reason to know of the dangers. A landowner does not owe a licensee a duty to inspect the premises or to make the premises safe for the licensee. An invitee is a person who enters upon the land of another upon an invitation that carries an implied representation that reasonable care has been used to make the premises safe for the invitee. A landowner must warn an invitee of known dangers. A landowner is liable for harm caused to an invitee by a condition on the land if the owner knew or should have known of the condition, should have expected that the invitee would not discover the condition, and failed to take reasonable care to protect the invitee against the condition. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The undisputed evidence showed that on the date of the incident plaintiff was defendant's fiancé, and had stayed overnight in her home. Plaintiff's injury occurred in defendant's garage at approximately 8:00 a.m. Defendant was not conducting a garage sale at that time, and plaintiff was not assisting defendant in preparing for a sale at the time the injury occurred. The premises were not held open for a commercial purpose; thus, plaintiff could not be considered an invitee. *Stitt*, *supra*, 604. The trial court correctly found a genuine issue of fact regarding plaintiff's status did not exist, and that plaintiff was a licensee.

Regardless of plaintiff's status, the trial court correctly granted summary disposition in favor of defendant on the ground the condition was open and obvious. The open and obvious danger doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 612; 537 NW2d 185 (1995). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). The broken glass was on the floor of defendant's garage near the bottom of the stairs. No evidence established the glass was under any other object, or the lighting in the garage was such that the floor could not be seen. It is reasonable to conclude that plaintiff would not have been injured had he been watching where he was walking. See *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999).

Furthermore, we reject plaintiff's argument that even assuming the condition was open and obvious it still presented an unreasonable risk of harm. Had plaintiff simply watched his step, any risk of harm would have been obviated. See *Spagnuolo v Rudds #2, Inc*, 221 Mich App 358, 360; 561 NW2d 500 (1997). Summary disposition was proper.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra